



Fostering Human Rights among European
Policies

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The Post-2014 EU Action Plan on Human Rights and Democracy

A Policy Brief

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Introduction¹

The Strategic Framework and Action Plan on Human Rights and Democracy ('SFAP') has been seen, since its adoption in 2012, as a ground-breaking document, and as a welcome commitment of the EU and its Member States towards delivering on the EU's pledge to promote human rights and democracy throughout their external relations policies.

Whereas the Strategic Framework is considered a foundational and permanent statement of the EU in this regard, the first version of the Action Plan has expired at the end of 2014. According to the EEAS, the results have been outstanding with about 90% of actions completed by the end of 2014. Therefore, a consensus was formed to issue a second instalment of the action plan.

This policy brief seeks to contribute to the design of this new Action Plan and identifies six items which should be addressed and improved on the occasion of the review of the Action Plan. For each item, the background issues to be taken into consideration are first laid out, then the objectives to be achieved through each item are spelled out, and finally concrete actions are suggested.

The six items are:

1. Avoid fragmentation between human rights, democratization and rule of law policies
2. Verifiable actions and use of indicators
3. Communicating on policy and reporting on progress
4. Engaging with EU Member States
5. Cooperation with third countries
6. Reduce the disconnect of the SFAP with economic, social and cultural rights

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I. Avoid fragmentation between human rights, democratization and rule of law policies

Human rights, democracy and rule of law form the core of the EU's 'values' underpinning all of its policies as per Art. 2 TEU. They are to be 'promoted and upheld' according to Article 3(5) TEU in the EU's relations with the wider world. In line with Article 21(1) TEU they belong to the set of principles that inspired the EU's creation and therefore guide the Union's action on the international scene. The three values are often dubbed the '**constitutional trinity**' in the set of EU norms, and are viewed as interdependent and inseparable.

Indeed, not only have philosophical and academic debates evidenced the conceptual links that exist between these different values, but the EU itself has endorsed the **inter-linkages** between them.² Relying on basic definitions of human rights, democracy and the rule of law, examples of such links are:

- The enjoyment of human rights cannot be ensured without a strong rule of law which notably allows for rights to be litigated;
- The rule of law is not possible outside a healthy democratic political process which ensures that the law is not arbitrary and/or oppressive towards anyone; and
- Democracy is only realised when it is exercised in full respect of human rights and the rule of law. A majoritarian rule, which would weaken human rights and the rule of law, is oppression in disguise.

Therefore, observers have noted the **fragmentation and absence of mutual reinforcement that exists between the different policies seeking to foster those values**.

The 2012 SFAP is, in this respect, a bit puzzling as its title and content refers to the promotion of human rights and democracy, but not the rule of law, even though lip service is paid to the latter in the Strategic Framework.

In addition, many observers have remarked that the human rights component of the SFAP was quite heavily tilted towards human rights, with the democracy component receiving far less attention.

Illustratively, the Strategic Framework, in the 'Pursuing coherent objectives', states:

Article 21 of the Treaty on European Union has reaffirmed the EU's determination to promote human rights and democracy through all its external actions. The entry into legal force of the EU Charter of Fundamental Rights, and the prospect of the EU's acceptance of the jurisdiction of the European Court of Human Rights through its accession to the European Convention on Human Rights, underline the EU's commitment to human rights in all spheres.

² Alexandra Timmer *et al.*, 'Report state-of-the-art literature review human rights, democracy and the rule of law', FRAME Deliverable No. 3.1, November 2013, available at <http://www.fp7-frame.eu/wp-content/materiale/reports/01-Deliverable-3.1.pdf>.

And

The EU seeks to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress and that those responsible are held to account. To this end, the EU will step up its efforts to promote human rights, democracy and the rule of law across all aspects of external action.

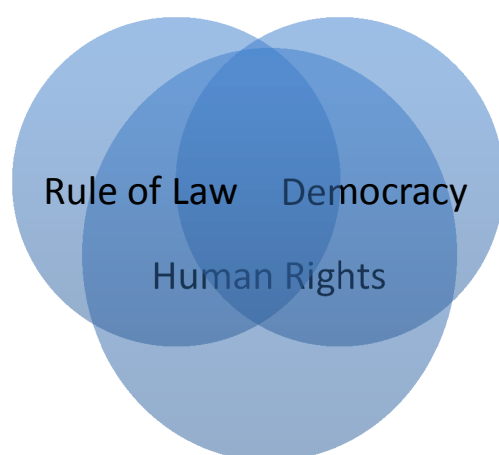
Seen like this, it seems that the three values are randomly cited, and **do not appear to be conceived in a mutually reinforcing manner as part of a coherence policy on value promotion.**

Therefore, not only is there a risk for gaps or overlap between actions taken in respect of each of those values separately, but the impression is also that some values have a higher profile than others.

A. Objectives

The **general objective** of this action is to **rebalance the focus of the SFAP on all three values**, and to seek links and synergies between them, in order to do justice to their interdependence in concrete actions. This is technically possible in the Action Plan since the Strategic Framework mentions human rights, democracy, and the rule of law. In the long term, this will also allow for a better conceptualization of the three values in the context of the alignment of internal and external policies. The foundations of this enterprise have notably been laid out in the European Commission's Communication on *A New EU Framework to Strengthen the Rule of Law* COM (2014) 158 final, and in a number of other background documents.³ In our opinion, the SFAP also has the potential to contribute to this reflection.

Focusing on the central role of human rights in the trinity, the following image could be used as a means of visually demonstrating the linkage:



³ See e.g. Sergio Carrera *et al* 'The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU - Towards an EU Copenhagen Mechanism', Study for the European Parliament, 2013, PE 493.031.

In the three overlapping circles, human rights is the biggest one to illustrate that it shares the largest number of principles with the other two values. Importantly, the larger presence of human rights indicates the conceptual choices of the EU – that of the thick conception of the rule of law as indicated by the aforementioned 2014 Communication of the Commission, and that of representative democracy (cf. Article 10(1) TEU) with rule of law and human rights safeguards endorsed by the Union.

The EU's **specific objectives** in this regard are:

1. To arrive at a more coherent and credible definition of its policy for its cardinal values; and
2. To seek better promotion of each value through the promotion of the other values, by exploiting the links and synergies between them.

B. Suggested adaptations

1. Include a general item in the Action Plan which would contain **actions to foster the rule of law in third countries**.

Such actions would be directed at:

- Increasing the formal quality of laws to ensure that they are clear, stable, general and understandable by all, so that everyone knows what their rights and obligations are and can plan their actions in consideration of those;
 - Raising awareness about the law, the legal system, rights and obligations in the population, so as to make everyone aware that they live in a society governed by law which entitles them to some rights and places certain obligations upon them;
 - Encouraging the creation of a well-educated, well-performing and affordable legal profession effectively able to defend the rights of citizens;
 - Contributing to the enhancement of the (democratic) accountability of executive powers in third countries by supporting their parliaments, but also by engaging with public officials, notably for combating corruption; and
 - Fostering the creation of independent judiciaries ensuring that disputes regarding rights and obligations, but also the judicial review of laws, are ensured in a timely manner and with due process. To some extent, this aspect is already present in action 26 (Administration of justice) and 27 (Responding to violations: ensuring accountability).
2. Reconsider a number of existing actions to ensure that, where implemented, they also have a **positive effect on the rule of law (and democracy where it is currently absent)**. This would help **operationalise the mutually reinforcing character of the different values**. For many such actions this could be quite straightforward.

Examples include:

- Action 1, 'incorporate human rights in all impact assessments', could include democracy and the rule of law, provided appropriate indicators can be found;

- Action 13, 'Entrench human rights in counter-terrorism activities', also lends itself to rule of law actions, making sure that counter-terrorist legislations are transparent and judicially reviewable, but also that alleged terrorists benefit from a fair trial; and
- Action 31, 'Impact on the ground through tailor-made approaches', is amenable to actions regarding the rule of law and democracy, as each of the bilateral partners has different needs in this respect.

II. Verifiable actions and use of indicators

The Action Plan was welcomed as a very useful roadmap for ensuring that the EU's pledge to promote human rights as part of its external action had a well-defined sense of direction.

Yet, many such **actions were drafted in vague terms**, and the internal document recording progress and/or achievement of these actions in terms of percentages, sounded at various instances a little hollow.

For example, when action 4 (a), 'Intensify the promotion of ratification and effective implementation of key international human rights treaties, including regional human rights instruments', is marked as 'achieved', one wonders what exactly was done, what kind of results were achieved, and what difference was really made. Was it simply exhortations to third countries to ratify more conventions, or were more effective means leveraged, leading to concrete results, such as a demonstrable increase in ratification numbers? Furthermore, beyond ratification, what kind of actions to foster effective implementation were put in place, and how were results measured?

The question of measuring the results of human rights promotion is particularly relevant in the EU context, as the Treaties impose on the EU an obligation to 'promote and uphold' human rights (see *supra*, I). The fulfilment of this obligation, which Member States placed on the EU, also needs to be measured as a matter of democratic accountability of the EU itself. In this regard, the success of every action of the Action Plan also needs to be quantified.

With regard to the above, **indicators are most likely instrumental in the success of an action plan-type of policy**. Since human rights are expressed in terms of legal standards, and since the actions of the Action Plan are designed as steps towards achieving those standards, indicators are a powerful tool to **measure, at regular intervals, the level of achievement** of such standards. Indicators would also **facilitate the continued search for coherent policies**, as cross-effects between different actions could more readily be diagnosed.

Unfortunately, indicators suffer from many **imperfections** between methodological intricacies (such as the joint examination of quantitative and qualitative data), and with their absence in certain fields or their proliferation in others, it is not easy to find a reliable standard against which each action can be benchmarked.

Therefore, promoting human rights may also mean working towards the identification and development of appropriate human rights indicators.

A. Objective

The objective of the future Action Plan should be to **bolster the credibility of the EU's action** in the promotion of its values through the definition of actions which are **verifiable in terms of results**.

B. Suggested adaptations

Suggestions to increase the credibility of EU action, notably through the use of indicators, include the following:

1. **Avoid vague objectives** which could dilute the 'action'-oriented character of the plan into generalities. When broad objectives are stated (for example the above-cited action 4 (a)), they should be broken down into concrete implementing actions;
2. When possible and/or available, **benchmark actions against an indicator** so as to allow for effective measurement of progress, and demonstrate causality between EU action and such progress. EU bodies and institutions have already been using indicators in a number of contexts. The Action Plan should capitalise on this and mention the use of indicators when actions connect or build on such practices. This is particularly relevant for the development field and for the elaboration of a rights-based approach to human rights (Action 10);
3. In case indicators are not readily available, work on a **coherent approach to human rights indicators** and rationalise the efforts that several EU bodies or institutions have already made to develop indicators. Relevant third countries should be engaged and cooperated with for this purpose, and their capacity to contribute to data collection should be taken into account. This should be the purpose of an Action as such; and
4. In the development of new indicators, adopt the **OHCHR 'structure-process-outcome' framework**,⁴ which is designed to measure the extent to which human rights standards are respected, protected, fulfilled and promoted in any given environment.

III. Cooperation with third countries

Cooperation between the EU and third countries on human rights issues is often challenging. In the EU's experience, third countries not only frequently lack interest to engage in a constructive dialogue with the EU, but also appear to disagree with the EU on principle, independent of the subject matter at hand. These widespread perceptions at the EU policy level are supported by scholarly studies to the extent that the EU faces difficulties to build coalitions and to shape the agenda of multilateral human rights bodies.

There are three main reasons which can be identified as being at the root of these challenges:

1. **Credibility:** The EU is often externally perceived to lack credibility as a human rights champion. Third country representatives particularly point to the EU's alleged lack of **internal-external** and **external-external consistency**. The first refers to discrepancies between the EU's internal

⁴ See United Nations, 'Report on indicators for promoting and monitoring the implementation of human rights', 6 June 2008, UN Doc No. HRI/MC/2008/3.

application of policies that it promotes externally. Critics particularly address the treatment of the Roma, racism and xenophobia issues within the EU's borders, the lack of concern and respect for economic and social rights – particularly in times of economic crisis – and the involvement of several EU Member States in human rights-violating anti-terror practices with the United States as part of the so-called 'war on terror'. **External-external consistency** 'refers to the degree of uniformity in which the EU promotes human rights externally, both with regard to individual human rights issues and with regard to individual third country partners. It has, for example, been criticised that the EU places a stronger focus on the promotion of civil and political rights, to the detriment of economic, social and cultural rights (see *infra*). It has also been noted that the EU is quicker to address human rights violations in economically weak and politically isolated countries, while being less vocal about comparable incidents in allied or partner countries';⁵

2. **Process:** The EU's unique nature as a supranational organization composed of 28 Member States necessitates a sophisticated internal coordination process in order to ensure policy coherence and a unified external voice. Although considerable progress has been made in recent years to increase the efficiency of this coordination process, the Union's resources in terms of time and personnel are still bound up to a high degree in purely internal discussions, thus leaving insufficient capacities for external outreach, lobbying and coalition building; and
3. **Substance:** Many third countries, in particular in the Global South, place stronger emphasis on economic, social and cultural rights ('ESC rights'), than on civil and political rights. The EU on the other hand focuses primarily on thematic initiatives in the area of civil and political rights. This is exemplified by the fact that the EU itself does not table resolutions on ESC rights in multilateral fora, and that its statements delivered at the multilateral level address primarily civil and political rights. On the other hand, the EU lists among its thematic priorities human rights issues that are controversial, or at least, of less significance for many third countries, such as, for example, LGBTI rights. There is thus a disconnection between the issues that are high on the EU's agenda and those that many third countries consider most important.

A. Objectives

The new Action Plan should address these challenges by identifying concrete steps to be taken in order to mitigate the EU's challenges in this respect. The EU's **objectives** should be:

1. To mitigate its consistency gaps in order to be perceived as a credible human rights authority by third country partners;
2. To further enhance its coordination process in Brussels and on the ground with local actors in order to free more capacities for increased dialogue with third country partners; and
3. To place ESC rights higher on its agenda and to use them as an entry point for third country dialogues.

⁵ Ibid.

B. Suggested adaptations

Potential **concrete actions** include:

1. Further intensify the **cooperation between FREMP and COHOM** by increasing the number of joint meetings per year from two to at least one per quarter and by specifying concrete outputs that the committees should jointly produce. These should include a periodic coherence report which analyses the internal-external consistency of the EU's human rights policy and identifies gaps that require action. The meetings should in particular also be used to discuss criticism on the internal human rights record that are levelled against the EU by third countries;
2. Regularly involve **NGOs and CSOs** that work on fundamental rights issues within the EU in meetings of FREMP and COHOM, and actively engage them in the debate on the internal-external consistency of the EU's human rights policy;
3. Adopt a **Strategic Framework and Action Plan for Fundamental Rights** based on the design of the SFAP and the Stockholm Programme and Action Plan. The development of the Strategic Framework and Action Plan should tie in with the ongoing discussions on a successor instrument for the Stockholm Programme;
4. Create and maintain a **database on the status of ratification** of international human rights instruments by the EU and the EU Member States;
5. Further strengthen the existing system of **burden sharing** (thereby preserving mutual trust amongst the Member States) by developing a strategy that identifies individual EU Member States as burden sharers for particular issues, based on their thematic or geographic involvement and expertise, as well as on their diplomatic networks;
6. Develop and table an **EU resolution initiative on an ESC rights issue** at the UN Human Rights Council, as a prominent 'flagship' initiative, highlighting the Union's commitment to ESC rights. National resolution initiatives of the EU Member States might be suitable candidates;
7. Accord ESC rights a more **prominent position in EU statements** at multilateral human rights fora;
8. Put ESC rights **higher on the agenda in human rights dialogues** with third countries; and
9. Use political and human rights dialogues as a **genuine forum for bilateral exchange** and avoid the perception of 'lecturing' the partner country. Identify human rights issues that are of particular interest for the partner country and place them high on the agenda.

IV. Communicating on policy choices and reporting on progress

A further item for consideration is the question of how the Action Plan contributes to the transparency of human rights policies and the accountability of the EU institutions in relation to the wider public. The Action Plan is, as indicated, a welcome development in that it provides a roadmap for current action, but transparency and accountability need to occur all along the policy cycle. In this regard, providing information on what will be done and why (priority setting); what has been done and how it was evaluated (reporting); and which actions will follow (planning), is currently done on an *ad hoc* basis and/or through the channel of the Brussels human rights NGOs. Meaningful interactions also take place with the European Parliament (most notably the DROI Sub-Committee), but direct communication to the public appears to

be a somewhat less developed aspect of the EU external human rights policy. Therefore, to buttress the transparency and accountability of the policy-making process leading to the Action Plan, next to involving the European Parliament, we would recommend to devise an effective communication strategy for the benefit of the wider public. So far, the access of citizens to information on the EU external human rights policies is limited. This is due to a number of factors – some of which cannot be overcome (i. e. the need to maintain the confidentiality of individual third country strategies), whilst others, however, can be addressed.

With regard to reporting on progress, under Action 3 of the 2012 Action Plan, the EEAS was obliged to ‘present the EU’s performance in meeting the objectives of its human rights strategy in the annual report on human rights and democracy in the world’. While the annual report is a suitable way to publicly monitor the implementation of the Action Plan, additional reporting obligations should be considered. In particular, it might be helpful to increase the frequency of reports from 1 year to 6 months, in order to allow for a more timely adaptation of the implementation strategy, including the increase or re-direction of efforts. Particularly given the comparatively short 2 year life-span of the Action Plan, a single intermediary report might not be sufficient. Additionally, the format of the Annual Report entails that only those actions on which progress has been made will be mentioned, whilst those on which no action has been taken so far, will be left out. This might create blind spots and direct the focus away from those issues on which most effort is required. Lastly, the publicity of the Annual Report might be detrimental to a frank and open stock taking and provide incentives to only refer to those actions which were successfully implemented. An additional, confidential progress report might therefore be beneficial for an assessment of the state of play.

A. Objectives

The objectives of enhanced communication and reporting are:

1. To ensure maximal **transparency ex ante** at the stage of policy-making, most notably for what regards the selection of thematic priorities, as those currently present in the 2012 Action Plan have been the object of critique both within and outside the EU (see notably the absence of ESC rights in the priorities);
2. To increase **transparency ex post** when evaluating achievements and failures. By the same token, more targeted reporting would generate debate and **input for better policies**; and
3. To present this information in a comprehensive and accessible manner, so as to facilitate the attribution of **accountability** to the EU’s actions.

B. Suggested adaptations

It appears, therefore, essential to maintain Action 3 ‘Present EU performance in meeting the objectives of its human rights strategy in the annual report on human rights and democracy in the world’, but also to provide for additional steps:

1. Devise **communication campaigns and tools** regarding human rights (but also democracy and rule of law) policy making, notably through an integrated website concerning the EU promotion of its values, and provide a forum for exchange with the wider public on priorities in this regard, to contribute in the definition of future Action Plans;
2. Draft a **reporting form** which covers all individual actions of the Action Plan. For each action, the institution(s)/actor(s) responsible for implementation should be identified. They should be provided with the opportunity to rate the level of implementation of the action on a pre-determined scale using indicators (as recommended above) and give a summary of actions undertaken so far and of the actions planned for the remainder of the duration of the Action Plan. Furthermore, they should be provided with the possibility to make comments and suggestions on the implementation of actions, which are outside the scope of their responsibility;
3. Establish a **six month reporting schedule** in which the form is filled by the EU and Member State institutions responsible for the implementation of the individual actions;
4. **Circulate** the consolidated document amongst all relevant EU and Member State institutions;
5. Provide a **forum for exchange** on the results of the progress reporting. The exchange should allow for an open discussion and exchange of best practices and information; and
6. Conduct a **final, public evaluation** of the Action Plan after its expiration, involving EU and Member States institutions, as well as NGOs, CSOs, and academia.

V. Engaging with EU Member States⁶

Promoting and speaking out on human rights and democracy is a joint responsibility of the EU and its Member States. Adopted at Council level, both the Strategic Framework and the corresponding EU Action Plan on Human Rights and Democracy consolidate this joint commitment to advance human rights worldwide. The implementation of an EU human rights policy framework, as is to be achieved through the formulation of the new Action Plan early 2015, is therefore based on the principle of burden sharing and the 3Cs approach: coherence, complementarity and coordination. Yet, while EU Member States broadly agree on the importance of promoting human rights in a normative way, there is often less consensus on how to achieve this in practice and what it implies in a certain context. The often sensitive and highly political nature of human rights, as well as the complex mix of Member States and EU foreign interests at play, further necessitates a close and systematic interaction between the EU and its Member States at various levels of engagement.

Despite significant promising improvements such as the new role of EU Delegations and the 2012 Strategic Framework as the basis for a joint EU/Member States human rights agenda, there is still a noticeable lack of consistent political backing for a coherent translation of this joint agenda at country level, particularly in countries where human rights are most at risk. **Well-coordinated and clear mandates from both Member States' capitals and Brussels** should mitigate the risk of the EU being (perceived as) left acting on its own, particularly at the level of EU Delegations, often while Member States pursue their own

⁶ Disclaimer: given the confidential nature of local EU HR strategies, some of the observations and recommendations outlined in this section may already be common practice, though simply not known to the broader public.

specific and sometimes competing foreign interests, raising challenges of coherence. Relying on Member States for certain issues would also be a way for the EU to stay engaged on those issues even where delivery by itself is not possible for certain reasons.

The above observations are particularly relevant in formal and informal political dialogues between the EU and partner countries, **when Member State support is ambiguous and/or partner countries receive mixed signals, hampering EU leverage in its human rights efforts**. Experience shows that, when EU positioning and action go beyond (or cross) Member States' individual interests or political capital, this often results in a dilution of the human rights agenda, in turn leading to the watering down of EU action to the lowest common denominator. Such practice leads to inconsistencies and 'double standards' and affects overall EU credibility as a 'norm entrepreneur'.⁷ In a similar vein, budgetary discussions on aid allocation to partner countries with a questionable human rights track record can lead to an outspoken split in Member States/EU positioning. Such so-called development vs. human rights debates on whether to cut or limit disbursements usually involve normative (human rights) arguments and strategic EU- or Member States-specific interests. The discussions between Northern and Southern Member States on whether or not to block millions of EU aid to the Gambia are an example hereof.

In terms of **ensuring coordination and complementarity** at country level, EU Delegations should i) chair the above-mentioned political dialogue between the EU/Member States and the partner countries (particularly, but not exclusively with ACP states); and ii) facilitate various regular or irregular working groups. Such structures mainly serve as information sharing fora on 'who does what', but can often provide the opportunity to ensure complementarity, discuss a division of labour, avoid overlapping or duplication of EU and Member States initiatives and generate greater leverage, including providing support to 'home-grown' human rights initiatives or human rights defenders working on sensitive issues. There remains, however, much scope for a more consistent and comprehensive approach, at both headquarters and EU Delegation level to allow for a more complimentary organisation of EU/Member States support to human rights promotion.

A. Objectives

In the previous Action Plan, which ended in December 2014, there was a lack of clear indications of the tasks and responsibilities for Member States in implementing the EU human rights agenda. Therefore, any future Action Plan should aim to work toward the following **objectives**:

1. Ensure clear and consistent political backing to better align EU and Member States' human rights agendas at country level; and
2. Elaborate and institutionalise coordination systems, both at headquarters and at country level.

⁷ Bossuyt, J., Lein, B., Rocca, C. 2014. Political dialogue on Human Rights under Article 8 of the Cotonou Agreement: study for the European Parliament Development Committee. Brussels: European Parliament.

B. Suggested adaptations

The following suggestions for concrete **actions** should be considered in order to generate closer and mutually reinforcing EU-Member States cooperation on human rights promotion in third countries:

1. Ensure closer, formal involvement of EU Member States' embassies in country-level human rights analysis to identify specific human rights needs and windows of opportunity. Build on such joint assessments to develop a common local EU human rights Strategy, including a division of labour. Where possible, and perhaps in parallel with – or integrated in – joint programming exercises, translate such a joint agenda in a common programming document. Such joint endeavours should be backed up and incentivised by clear and consistent political support from Brussels and the Member States' capitals;
2. Communicate more transparently on EU and Member States' interests, both internally and vis-à-vis third countries. Both the EU and its Member States tend to be rather ambiguous when it comes to formulating their strategic foreign interests – this is in stark contrast to their ambitious commitments to human rights promotion. More openness would provide more clarity on the areas for, and the limitations of, EU-Member State cooperation, and would help manage expectations among local civil society constituencies regarding the EU's overall agenda; and
3. Closely involve EU Member States in the formulation of the new Action Plan and jointly develop an improved monitoring system which allows tracking of Member States' progress in their contribution to the overall ambitions of the Strategic Framework. First, the new AP should outline explicitly which goals require what type of Member State collaboration. Secondly, a more detailed log frame should specify the involvement of particular Member States, potentially identifying which particular Member State should (voluntarily) lead and report on certain human rights topics. Other ways to increase Member State accountability with regard to the Action Plan could include Member State-specific 'boxes' in the annual thematic report and their examples of innovative programmes and successful (or unsuccessful) Member States-EU joint initiatives.

VI.Reduce the disconnect of the SFAP with Economic, Social and Cultural Rights

While the 2012 EU SFAP notes that the EU will intensify its efforts to promote and protect ESC rights, this aspect of the Strategy has been reflected rather poorly in the past Action Plan. Moreover, several studies of the EU's human rights efforts have pointed out that, in implementing the human rights dimensions of some of its external policies, such as development and trade,⁸ the EU sometimes tends to be too (exclusively) focused on 'traditional' civil and political rights (e.g. fundamental freedoms and the abolition

⁸ For suggestions as to how to increase the profile of EU efforts towards ESCR promotion in other domains, see *supra*, III.

of the death penalty).⁹ For instance, there is limited attention for the rights-based dimensions of development cooperation which touch upon certain ESC rights.¹⁰

The **tendency to deal with human rights in isolation from the broader sphere of development cooperation** and the associated policy, programming and financing toolbox is an old sore and stems from a range of historical and current factors, such as the interpretation that aid should be non-political, the limited collaboration across geographic and thematic (human rights) expert units in institutions, and the fear of development staff that too much of a human rights focus would distract attention from economic development, whereby human rights issues would complicate donor-recipient relations and therefore hamper the straightforward delivery of aid disbursements – particularly since aid-dependency and poor human rights track records often go hand in hand.

While significant progress has been made in recent years, much remains to be done to **mainstream human rights in development cooperation**. The effective integration of human rights into policy formulation and implementation processes is crucial in this regard, as well as incorporating a sound human rights needs and opportunities analysis at programming level (e.g. in the Country Strategy Papers) and strengthening the linkages between human rights political dialogue and the relevant geographic and thematic instruments at play in the country. In this regard, the EU's Agenda for Change offers a good point of departure, since it aims to enhance the importance of human rights, democracy and good governance in EU development cooperation, across a mix of instruments and aid modalities at country level.¹¹ The renewed attention for a 'rights-based approach' in several areas (e.g. food, water, health), as well as the new budget support guidelines, particularly those related to the 'Good Governance and Development Contracts', offer promising opportunities to further align the human rights and development agendas. However, such initiatives remain somewhat *ad hoc* and depend to some extent, particularly at EU Delegation level, on committed individuals.

When it comes to **trade**, the EU has a number of trade instruments at its disposal featuring innovative means to make their validity conditional to the partner's human rights performance, either through conditionality in return for preferential access to the EU market or in the form of human rights clauses included in the EU's bilateral and regional free trade agreements. Although exclusively applied to developing countries and emerging economies, and subjected to criticism regarding double standards and

⁹ The EIDHR's programming objectives are telling in this regard, in the sense that they focus on the support to i) human rights defenders; ii) 'other EU HR priorities'; iii) democracy; iv) election observations; and v) targeted key actors and processes, including international and regional human rights instruments and mechanisms. See European Commission, Management Plan 2014 Directorate-General for Development and Cooperation – EuropeAid, Ref. Ares(2014)208906 - 30/01/2014.

¹⁰ Ibid., 30. See also Petrucci, F., Bossuyt, J., De Feyter, K., Foresti, M., Domingo, P., Monti, S., Thematic evaluation of the European Commission support to respect of Human Rights and Fundamental Freedoms (including solidarity with victims of repression), Final report, Vol. 1, December 2011.

¹¹ European Commission, 'Increasing the impact of EU Development Policy: an Agenda for Change' Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 13 October 2011, COM(2011) 637 final.

norms versus interests dichotomy, many human rights provisions in EU trade instruments relate to ESC rights. For instance, the new generation of bilateral and regional trade agreements includes sustainable development chapters aimed specifically at addressing labour rights. However, the monitoring and enforcement of these provisions has been found to be flawed and has led to accusations of double standards and pusillanimity.

Furthermore, observers have noted **inter-institutional tendencies on human rights-related trade discussions**. Whereas the Commission, and to a slightly lesser extent the Council, generally tends to favour the 'carrot', promoting human rights progress through incentives and capacity-building measures, and using sanctions as a means of last resort, the European Parliament and civil society organisations at large tend to favour a more normative approach, using trade sanctions and the human rights clause in a clearer and more consistent way, thus favouring the 'stick'.¹²

A. Objectives

In order to further institutionalise closer alignment between EU trade and development cooperation and ESC rights, the Action Plan should be fine-tuned toward the following objectives:

1. Enhanced resources and incentives to further mainstream ESC rights promotion through development cooperation at all stages of the policy cycle.
2. Enhanced monitoring and enforcement of ESC rights conditions through EU trade instruments.

B. Suggested adaptations

We suggest the following recommendations for **action**:

1. In countries where Joint Programming has been introduced, look at the scope of human rights promotion in ESC sectorial programmes;
2. Make ESC rights one of the strategic EU priorities (flagship priorities) in the new Action Plan and develop EU guidelines on ESC rights promotion and the protection of relevant communities;
3. Include human rights monitoring in the sectorial and programme-level evaluations of development programming at country level;
4. Ensure that the Development Cooperation and Trade and Investment sections in EU Delegations are adequately resourced, staffed, trained and incentivised to integrate human rights into their operations;
5. Support experimenting and knowledge sharing on how to best mainstream human rights in development cooperation, while creating incentives at political, managerial and implementation level to promote mainstreaming more actively;
6. Institutionalise the use of, and improve capacity to conduct, sound political economy analysis of the power dynamics and interests at play in order to fully understand the type of structural reforms required to address ECS rights issues at sectorial and/or country level;

¹² Beke, L., D'Hollander, D., Hachez, N. and Pérez de las Heras, B. 'Report on the integration of human rights in EU development and trade policies'. WP No.9 – Deliverable No.1 FRAME, 30 September 2014. <http://www.fp7-frame.eu/wp-content/materiale/reports/07-Deliverable-9.1.pdf>

7. Incentivise knowledge sharing on best practices related to the use of the sustainable development chapters in free trade agreements; and
8. Design a new approach to conditionality which is flexible enough to allow for an adapted, systematic and effective response to human rights (particularly ESC rights) violations without creating double standards.